

HOUSE BILL 1528

By Sherrell

AN ACT to amend Tennessee Code Annotated, Title 3;  
Title 4; Title 8, Chapter 6; Title 29 and Title 47,  
relative to social media.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Social Media Accountable  
Censorship Act" (the S.M.A.C. Act).

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 1, is amended by adding  
the following as a new section:

(a) As used in this section:

(1) "Algorithm" means a set of instructions designed to perform a specific  
task;

(2) "Hate speech" means a phrase concerning content that an individual  
finds offensive based on the individual's personal moral code;

(3) "Obscene" means that an average person, applying contemporary  
community standards, would find that, taken as a whole, the dominant theme of  
the material appeals to prurient interests;

(4) "Political speech":

(A) Means speech relating to the state, government, body politic,  
or public administration as it relates to governmental policymaking,  
including speech by the government or a candidate for office and any  
discussion of social issues; and

(B) Does not include speech concerning the administration, law,  
or civil aspects of government;

(5) "Religious speech" means a set of unproven answers, truth claims, faith-based assumptions, and naked assertions that attempt to explain such greater questions as how the world was created, what constitutes right and wrong actions by humans, and what happens after death;

(6) "Social media website":

(A) Means an internet website or application that enables users to communicate with each other by posting information, comments, messages, or images, and that meets all of the following requirements:

(i) Is open to the public;

(ii) Has more than seventy-five million (75,000,000) subscribers with personal user profiles provided by the website;

(iii) From its inception, has not been specifically affiliated with any one (1) religion or political party;

(iv) Provides a means for the website's users to report obscene materials and has in place procedures for evaluating those reports and removing obscene material; and

(v) Allows for subscribers to sign up for a personal user profile page or account where beliefs and preferences can be expressed by the user; and

(B) Does not include a website that merely permits members of the general public to post comments on content published by the owner of the website; and

(7) "User profile" means a collection of settings and information associated with a user or subscriber who signs up for an account made available by a social media website.

(b)

(1) The owner or operator of a social media website who contracts with a social media website user in this state is subject to a private right of action by such user if the social media website intentionally:

(A) Deletes or censors the user's religious speech or political speech; or

(B) Uses an algorithm to disfavor or censure the user's religious speech or political speech.

(2) A court may award a social media website user who prevails in an action under this section:

(A) Up to seventy-five thousand dollars (\$75,000) in statutory damages;

(B) Actual damages;

(C) If aggravating factors are present, punitive damages;

(D) Costs and reasonable attorneys' fees; and

(E) Other forms of equitable relief.

(3) A social media website that restores from deletion or removes the censoring of a social media website user's speech within seventy-two (72) hours of receipt of a request for restoration from deletion or removal of censorship from the affected social media website user, or the user's agent, may use that fact to mitigate any damages sought in an action under this section.

(c) A social media website user's alleged hate speech is not a legal justification for a social media website to engage in conduct described in subdivision (b)(1), and the owner or operator of a social media website cannot raise a social media website user's alleged hate speech as a defense in an action brought under this section.

(d) The attorney general and reporter may bring a civil cause of action under this section on behalf of a social media website user who resides in this state and whose religious speech or political speech has been censored by a social media website.

(e) This section does not apply to the following:

(1) A social media website that deletes or censors a social media website user's speech or that uses an algorithm to disfavor or censure speech that:

(A) Calls for immediate acts of violence;

(B) Is obscene, lewd, lascivious, filthy, or pornographic in nature;

(C) Is the result of operational error;

(D) Is the result of a court order;

(E) Comes from an inauthentic source or involves false impersonation;

(F) Entices criminal conduct;

(G) Involves minors bullying minors;

(H) Constitutes copyright or trademark infringement;

(I) Is excessively violent; or

(J) Constitutes harassment spam of a commercial, not religious or political nature; and

(2) A social media website user's censoring of another social media website user's speech.

(f) Only social media website users who are eighteen (18) years of age or older have standing to seek enforcement under this section.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect July 1, 2023, the public welfare requiring it.